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**REPORT ON THE
 FILING OR DETERMINATION OF AN
 ACTION REGARDING A PATENT OR
 TRADEMARK**

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. CV 12-04306 HRL	DATE FILED 8/15/2012	U.S. DISTRICT COURT 280 South First Street, Rm 2112, San Jose, CA 95113
PLAINTIFF EPL HOLDINGS, LLC		DEFENDANT APPLE, INC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 5,175,769		SEE ATTACHED COMPLAINT
2 7,683,903		
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In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wiekling	(BY) DEPUTY CLERK Betty Walton	DATE August 16, 2012
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EPL HOLDINGS, LLC, a Delaware limited liability company,

Plaintiff,

vs.

APPLE, INC., a California corporation,

Defendant.

CV 12-04306

COMPLAINT FOR PATENT INFRINGEMENT

DEMAND FOR JURY TRIAL

Plaintiff EPL Holdings, LLC ("EPL") complains and alleges as follows against Defendant Apple, Inc. ("Apple"):

THE PARTIES AND THE NATURE OF THIS ACTION

1
2 1. EPL is a Delaware limited liability company having its principal place of business
3 at 2666 E. Bayshore Road, Suite C, Palo Alto, California 94303-3211.

4 2. On information and belief, Apple is a California corporation having its principal
5 place of business at 1 Infinite Loop, Cupertino, California 95014. Apple may be served via its
6 registered agent, CT Corporation System, 818 W 7th St., Los Angeles, California 90017.

7 3. This action arises under the patent laws of the United States, Title 35 of the United
8 States Code, and relates to U.S. Patent Nos. 5,175,769 and 7,683,903.

JURISDICTION

9
10 4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

11 5. Personal jurisdiction of this Court over Apple is proper because Apple commits
12 acts of infringement in violation of 35 U.S.C. § 271 and places infringing products into the
13 stream of commerce, through an established distribution channel, with the knowledge and/or
14 understanding that such products are sold in the State of California, including this District.
15 Further, Apple designs and markets infringing products from its headquarters located in the State
16 of California, including this District. These acts cause injury to EPL within the District. Upon
17 information and belief, Apple derives substantial revenue from the sale of infringing products
18 distributed within the District, and/or expects or should reasonably expect its actions to have
19 consequences within the District, and derives substantial revenue from interstate and
20 international commerce. In addition, Apple has knowingly induced, and continues to knowingly
21 induce, infringement within this State and within this District by contracting with others to
22 market and sell infringing products with the knowledge and intent to facilitate infringing sales of
23 the products by others within this District, by creating and/or disseminating user manuals for the
24 products with like mind and intent, and by warranting the products sold by Apple and others
25 within the district.

VENUE AND INTRADISTRICT ASSIGNMENT

26
27 6. Plaintiff EPL realleges and incorporates by reference paragraphs 1- 5.
28

1 7. Venue is proper within this District under 28 U.S.C. §§ 1391(b), (c), and 1400(b).

2 **FACTUAL BACKGROUND**

3 8. Since before 1992, EPL and its predecessor in interest, Enounce, Inc. ("Enounce"),
4 have developed and continue to develop important technologies that allow consumers to play
5 back digital media content, including audio and video, at variable speeds, *i.e.*, slower or faster
6 than normal speed. Variable speed control is becoming as popular as volume control on digital
7 media playback devices. Indeed, this technology has become increasingly prevalent in some of
8 the most popular consumer electronic products currently on the market.

9 9. On or about January 28, 2002, Apple employee Tony Fadell requested a meeting
10 with Enounce's founder, Donald J. Hejna, Jr., to discuss the playback technology.

11 10. In response to Apple's request, on or about February 5, 2002, Mr. Hejna and
12 another Enounce employee, Howard Giles, met with Mr. Fadell and at least two other Apple
13 employees at Apple's Cupertino, California offices and discussed Enounce's patented
14 technology.

15 11. Apple and Enounce then entered into a non-disclosure agreement ("NDA")
16 effective February 6, 2002, that expired on February 6, 2005.

17 12. On or about March 19, 2002, Apple employee Aram Lindahl met with Mr. Hejna
18 and again discussed Enounce's patented technology. At that meeting, Mr. Hejna provided Mr.
19 Lindahl with a copy of United States Patent No. 5,175,769 ("the '769 patent").

20 13. Within weeks of the March 19, 2002, meeting, Apple offered Enounce a *de minimis*
21 \$50,000 for a license to use Enounce's patented technology.

22 14. Because Mr. Hejna and his colleagues believed that the offer fell woefully short of
23 the value of their technology, Enounce declined Apple's offer.

24 15. Thereafter, and unbeknownst to Enounce, Apple began extensively using
25 Enounce's patented technologies by incorporating them into key Apple consumer electronics
26 products, including but not limited to the iPhone and iPad, on which Apple makes billions of
27
28

1 dollars in U.S. sales annually. Apple took these actions with blatant knowledge and disregard for
2 the legal rights of Enounce.

3 16. Moreover, Apple began to advertise and tout the ability of its digital media players
4 to play back media files at variable speeds, the precise technology found in the Enounce patents.
5 For example, Apple describes its QuickTime product as a "sophisticated media player" and
6 further states, "Want to speed through a movie or slow things down? A handy slider lets you set
7 playback from 1/2x to 3x the normal speed." (<http://www.apple.com/quicktime/what-is/>).

8 17. Similarly, Apple instructs iPhone users to "Set the playback speed" to play back
9 media files at variable speeds using the technology found in the Enounce patents:

10 Tap ☒ Tap again to change the speed.

11 ☒ = Play at double speed.

12 ☒ = Play at half speed.

13 ☒ = Play at normal speed.

14 (iPhone User Guide For iOS 5.1 Software, at 77).

15 18. While Apple enjoyed billions of dollars of sales, Mr. Hejna and his company have
16 suffered and continue to suffer due to the inability to realize the full and fair value of the
17 patented inventions.

18 COUNT I

19 INFRINGEMENT OF U.S. PATENT NO. 5,175,769

20 19. Plaintiff EPL realleges and incorporates by reference paragraphs 1-18 above, as if
21 fully set forth herein.

22 20. EPL is the owner by assignment from Enounce, Inc., including the right to sue for
23 past damages, of United States Patent No. 5,175,769, titled "Method for Time-Scale
24 Modification of Signals." The '769 patent was duly and legally issued by the United States
25 Patent and Trademark Office on December 29, 1992. A true and correct copy of the '769 patent
26 is included as Exhibit A.

27 21. On information and belief, Apple infringed the '769 patent in the State of
28

1 California, in this District, and elsewhere in the United States, by, among other things, making,
2 using, selling, offering for sale, and/or importing into the United States products with variable
3 speed playback capability. Such products include, by way of example and without limitation,
4 Apple iPhone, iPod Touch, and iPad, the use of which were covered by one or more claims of
5 the '769 patent, including but not limited to claim 1. By making, using, importing, offering for
6 sale, and/or selling such products and services that are covered by one or more claims of the '769
7 patent, Apple injured EPL and is thus liable to EPL for infringement of the '769 patent pursuant
8 to 35 U.S.C. § 271.
9

10 22. On information and belief, Apple induced others to infringe the '769 patent in
11 violation of 35 U.S.C. § 271 by taking active steps to encourage and facilitate direct infringement
12 by others of at least claim 1 of the '769 patent with knowledge of that infringement, such as,
13 upon information and belief, by instructing users of the Apple iPhone, iPod Touch, and iPad to
14 play back digital media at faster- and/or slower-than-normal rates using the methods claimed in
15 the '769 patent. Apple's customers who played back digital media at faster- and/or slower-than-
16 normal rates directly infringed the claims of the '769 patent, including but not limited to claim 1.
17

18 23. EPL's predecessor in interest, Enounce, Inc., put Apple on notice of the '769 patent
19 during the meetings in 2002 between Mr. Hejna and members of Apple's engineering and design
20 teams for the Apple iPod and other products, such members including at least Mr. Fadell and Mr.
21 Lindahl.

22 24. Apple's infringement of the '769 patent was without regard to such prior
23 knowledge and communications with Enounce and Mr. Hejna. Thus, Apple's infringement was
24 willful.

25 25. As a result of Apple's acts of infringement, Plaintiff EPL has suffered substantial
26 damages in an amount to be proven at trial, but in no event less than a reasonable royalty for the
27 use made of the invention by Apple, together with interest and costs as fixed by the Court.
28

INFRINGEMENT OF U.S. PATENT NO. 7,683,903

27. Plaintiff EPL realleges and incorporates by reference paragraphs 1-26 above, as if fully set forth herein.

28. EPL is the owner by assignment from Enounce, Inc., including the right to sue for past damages, of United States Patent No. 7,683,903 ("the '903 patent") entitled "Management of Presentation Time in a Digital Media Presentation System with Variable Rate Presentation Capability." The '903 patent was duly and legally issued by the United States Patent and Trademark Office on March 23, 2010. A true and correct copy of the '903 patent is included as Exhibit B.

29. On information and belief, Apple has infringed and continues to infringe the '903 patent in the State of California, in this District, and elsewhere in the United States, by, among other things, making, using, importing, offering for sale, and/or selling products and services with variable speed playback capability. Such products and services include, by way of example and without limitation, Apple iPhone, iPad, iPod Touch, MacBook Air, MacBook Pro, Mac mini, iMac, and Mac Pro, which are covered by one or more claims of the '903 patent, including but not limited to claim 13. By making, using, importing, offering for sale, and/or selling such products and services that are covered by one or more claims of the '903 patent, Apple has injured EPL and is thus liable to EPL for infringement of the '903 patent pursuant to 35 U.S.C. § 271.

30. As a result of Apple's acts of infringement, Plaintiff EPL has suffered and will continue to suffer substantial damages in an amount to be proven at trial, but in no event less than a reasonable royalty for the use made of the invention by Apple, together with interest and

1 costs as fixed by the Court.

2 31. Plaintiff EPL and its predecessor in interest Enounce have complied with the
3 requirements of 35 U.S.C. § 287.

4 32. Plaintiff EPL has been irreparably harmed by Apple's act of infringement, and will
5 continue to be harmed unless an injunction is issued enjoining Apple and its agents, servants,
6 employees, representatives, affiliates, and all others acting or in active concert therewith from
7 infringing the '903 patent.
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff EPL Holdings, LLC respectfully requests that this Court enter:

- 11 a. A judgment in favor of Plaintiff that Apple has infringed, either literally and/or
12 under the doctrine of equivalents, the '769 patent and the '903 patent;
- 13 b. A judgment that Apple induced infringement of the '769 patent;
- 14 c. A judgment that Apple willfully infringed the '769 patent;
- 15 d. A permanent injunction enjoining Apple and its officers, directors, agents, servants,
16 affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active
17 concert therewith from infringement, inducing the infringement of, and/or contributing to the
18 infringement of the '903 patent;
- 19 e. A judgment and order requiring Apple to pay Plaintiff its damages, costs, expenses,
20 and prejudgment and post-judgment interest for Apple's infringement of the '769 patent and the
21 '903 patent as provided under 35 U.S.C. § 284;
- 22 f. A judgment and order that this case is exceptional and requiring Defendant Apple
23 to pay Plaintiff reasonable experts' fees and attorneys' fees pursuant to 35 U.S.C. § 285; and
- 24 g. Any and all other relief as the Court may deem appropriate and just under the
25 circumstances.

26 **DEMAND FOR JURY TRIAL**

1 Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury
2 of any issues so triable by right.

3
4 Dated: August 15, 2012

5
6 By: 

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